

shall file with the division an answer to the allegations of the complaint. The department shall serve a copy of the answer upon all other parties.

(2) **ANSWER; CONTENTS.** The answer shall contain a specific admission, denial or explanation of allegation of the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the respondent shall so state and this will have the effect of a denial. Admissions or denials may be to all or part of an allegation but shall fairly meet the substance of the allegation. Any affirmative defense relied upon, including without limitation the statute of limitations, shall be raised in the answer unless it has been previously raised by motion in writing. Failure to raise the affirmative defense that a complaint is barred by the statute limitations in a timely filed answer may, in the absence of good cause, be held to constitute a waiver of such affirmative defense.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**Ind 88.12 Pre-hearing conference.** In any case set for hearing, pre-hearings may be held in accordance with the provisions of s. 227.44 (4), Stats.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. Register, October, 1991, No. 430, eff. 11-1-91.

**Ind 88.13 Subpoenas and motions.** (1) **SUBPOENAS.** The administrative law judge may issue subpoenas whenever necessary to compel the attendance of witnesses or the production of documents. This may be done on the administrative law judge's own motion or upon proper application of any party. Service of subpoenas shall be made in the manner prescribed by law. Subpoenas may be enforced pursuant to s. 885.12, Stats.

(2) **MOTIONS.** Motions made during a hearing may be stated orally and shall, with the ruling of the administrative law judge, be included in the record of the hearing. All other motions shall be in writing and shall state briefly the relief requested and the grounds upon which the moving party is entitled to relief. All written motions shall be filed with the administrative law judge or with the director of the division's bureau of legal services. Any party opposing the motion may file a written response. All written motions shall be decided without further argument unless requested by the administrative law judge or director.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**Ind 88.14 Pre-hearing disclosure and discovery.** (1) **EXCHANGE OF NAMES OF WITNESSES AND COPIES OF EXHIBITS.** By no later than the tenth day prior to the day of the hearing, the parties shall file with the division and serve upon the other party a written list of the names of witnesses and copies of the exhibits which the parties intend to use at the hearing. The administrative law judge may exclude witnesses and exhibits not identified in a timely fashion pursuant to this section. This section does not apply to witnesses and exhibits offered in rebuttal which the party could not have reasonably anticipated using prior to the hearing.

(2) **PRE-HEARING DISCOVERY.** A party may obtain discovery prior to hearing, except that discovery directed to a complainant who is not represented by legal counsel shall not be permitted in the absence of written consent by the administrative law judge. The scope of discovery, the methods of discovery and the use of discovery at hearing will be the same as set forth in ch. 804, Stats. The administrative law judge has the same authority to compel discovery, to issue protective orders and to impose

Register, October, 1991, No. 430

sanctions as the court has under ch. 804, Stats. Copies of all demands for discovery and responses to demands for discovery shall be filed with the division when they are served. Discovery may not be used prior to the time that a matter is certified to hearing, except that the taking and preservation of evidence shall be permitted prior to certification to hearing under the circumstances set forth in s. 227.45 (7), Stats.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; am. (2), Register, October, 1991, No. 430, eff. 11-1-91.

**Ind 88.15 Disqualification of the administrative law judge.** Upon the administrative law judge's own motion or upon a timely and sufficient affidavit filed by any party, the administrative law judge shall determine whether to disqualify himself or herself because of personal bias or other disqualification. Such determination shall be made a part of the record and decision in the case.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**Ind 88.16 Hearings.** (1) **PROCEDURE.** Hearings shall be conducted in conformity with the act and the provisions of ch. 227, Stats.

(2) **APPEARANCE OF PARTIES.** Parties may appear at the hearing in person and by counsel or other representative.

(3) **ACCELERATION OF HEARING.** The parties may file a written stipulation that the hearing be held less than 30 days after service of the notice of hearing.

(4) **POSTPONEMENTS AND CONTINUANCES.** All requests for postponements shall be filed with the administrative law judge or with the director within ten days after the date of the notice of hearing, except where emergency circumstances arise thereafter and prior to hearing. Postponements and continuances shall be granted only for good cause shown and not for the mere convenience of the parties, their attorneys or their representatives.

(5) **FAILURE TO APPEAR.** If the complainant fails to appear at a hearing, either in person or by a representative, the administrative law judge shall dismiss the complaint. If a respondent fails to appear at hearing, the hearing shall proceed as scheduled. If, within 10 days after the date of the hearing, any party who fails to appear shows good cause in writing for the failure to appear, the administrative law judge may reopen the hearing.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**Ind 88.17 Record of proceedings.** (1) **TRANSCRIPTION OF RECORD.** A stenographic, electronic or other record of oral proceedings shall be made at all hearings conducted under the act. Transcription of the record for purposes other than judicial review shall be at the expense of any party who requests the transcription, at a reasonable compensatory fee as determined by the department. The record shall be transcribed into a written transcript at the department's expense only for the purpose of judicial review.

(2) **TRANSCRIPTS.** Copies of the written transcripts shall be at the expense of any party who requests the transcript, at a reasonable fee as determined by the department, except that copies shall be made avail-

Register, October, 1991, No. 430

able without cost to a party who submits a sworn affidavit of indigency and the inability to pay the cost of the transcript.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**Ind 88.18 Decision and order.** (1) **GENERAL.** After the close of the hearing, including any briefing which may be allowed by the administrative law judge, the administrative law judge shall prepare a formal written decision which shall include findings of fact, conclusions of law and an order, and which may be accompanied by a memorandum opinion. A copy of the administrative law judge's decision shall be served on the parties by the department.

(2) **CONTENTS OF DECISION AND ORDER AFTER HEARING ON THE ISSUE OF PROBABLE CAUSE.** After a hearing on the issue of probable cause, the administrative law judge shall issue a decision and an order which dismisses the allegations of the complaint or which orders the matter remanded for conciliation pursuant to s. Ind 88.09, depending upon the administrative law judge's findings and conclusions on the issue of probable cause.

(3) **CONTENTS OF DECISION AND ORDER AFTER HEARING ON THE MERITS.** After a hearing on the merits, the administrative law judge shall issue a decision and an order which shall either dismiss the allegations of the complaint or shall order such action by the respondent as will effectuate the purposes of the act, depending upon the administrative law judge's findings and conclusions on the merits of the complaint.

(4) **COMPUTATION OF INTEREST.** Interest on any award made pursuant to this subchapter shall be added to that award and computed at an annual rate of 12% simple interest. Interest shall be computed by calendar quarter.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86; emerg. r. (5), eff. 4-29-91; r. (5), Register, October, 1991, No. 430, eff. 11-1-91.

**Ind 88.19 Petition for review.** Any party may file a written petition for review of the administrative law judge's decision and order by the labor and industry review commission. The petition shall be filed with the division's Madison or Milwaukee office within 21 days after the date that a copy of the administrative law judge's decision and order is mailed to the last known addresses of the parties.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**Ind 88.20 Pre-employment inquiries and employment records.** An employer subject to the act may make such pre-employment inquiries and keep such employment records as will enable the employer to determine statistically the age, race, color, creed, handicap, sex, national origin, ancestry or marital status of applicants and employees. Pre-employment inquiries and employment records which tend directly or indirectly to disclose such information do not constitute unlawful discrimination per se.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**Ind 88.21 Posting requirement.** Every employer, employment agency, labor organization and licensing agency subject to the act shall post in conspicuous places upon its premises a poster prepared and made avail-

Register, October, 1991, No. 430

able by the department relating to the provisions of the act and this chapter.

History: Cr. Register, June, 1986, No. 366, eff. 7-1-86.